

## **EXHIBIT A**



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**PATENT**

Gayle W. Chaney  
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: Dahners

Group Art Unit: 3733

**Serial No.: 10/672,370**

Examiner: Swiger, III, James L.

Filed: September 25, 2003

Docket No.: 421/75/2

Confirmation No.: 3033

For: MODIFICATION OF PERCUTANEOUS INTRAFOCAL PLATE SYSTEM

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**AMENDMENT C**

Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

This is responsive to the Office Action dated July 13, 2007 for which a shortened statutory period for reply has been extended up to and including January 14, 2008, since January 13, 2008 fell on a Sunday. A petition for a 3-month Extension of Time is attached hereto. Favorable consideration is respectfully requested in view of the following Amendments and Remarks.

IN THE CLAIMS:

What is claimed is:

1. (Currently Amended) A longitudinally extending intrafocal plate for securing bone fractures, said intrafocal plate comprising an elongated intrafocal plate element having a surface at one end thereof defining a top and a bottom and a leading end and a trailing end and sized to overlay a fracture site, and having a longitudinally extending intrafocal resilient body element integral with the intrafocal plate element at one end thereof adjacent to but spaced apart from the trailing end of the surface of the plate element so that the leading end of the surface of the plate element extends above the location at which the resilient body element is integral to the surface of the plate element and so as to define an overhanging heel between the location at which the resilient body element is integral to the surface of the plate element and the trailing end of the surface, the overhanging heel extending downwardly below the location at which the resilient body element is integral to the surface of the plate element wherein ~~said~~ the heel serves to help stabilize the fracture site, ~~said~~ the body element being formed so as to extend generally in the lengthwise direction of the surface and wherein the other end of the body element defines a pin element.
2. (Previously Presented) An intrafocal plate according to claim 1, wherein a shoulder is defined between the surface and the one end of the body element connected thereto.

3. (Previously Presented) An intrafocal plate according to claim 1, wherein the longitudinally extending resilient body element depends downwardly and outwardly from the bottom of the surface.
4. (Previously Presented) An intrafocal plate according to claim 1, wherein the surface defines one or more apertures therein.
5. (Currently Amended) An intrafocal plate for securing bone fractures, said intrafocal plate comprising an elongated intrafocal plate element having a surface at one end thereof defining a top and a bottom and a leading end and a trailing end and sized to overlay a fracture site, and having a longitudinally extending intrafocal resilient body element integral to the surface ~~at one end thereof~~ adjacent to but spaced apart from the trailing end of the surface of the plate element so that the leading end of the surface of the plate element extends above the location at which the resilient body element is integral to the surface of the plate element and so as to define an overhanging heel between the location at which the resilient body element is integral to the surface of the plate element and the trailing end of the surface, the overhanging heel extending downwardly below the location at which the resilient body element is integral to the surface of the plate element wherein said the heel serves to help stabilize the fracture site, and the other end of the body element defining a pin, said the intrafocal plate including one or more screws for insertion through one or more apertures defined in the surface of the plate element.

6. (Currently Amended) A longitudinally extending intrafocal plate for securing metaphyseal bone fractures, said intrafocal plate comprising an elongated intrafocal plate element having a surface at one end thereof with one or more apertures therein and defining a top and a bottom and a leading end and a trailing end and sized to overlay a fracture site, and having a longitudinally extending intrafocal resilient body element integral to and depending from the trailing end of the surface so that the body element forms an acute angle with the surface and extends generally in the lengthwise direction of the surface, the body element being adjacent to but spaced apart from the trailing end of the surface of the plate element so that the leading end of the surface of the plate element extends above the location at which the resilient body element is integral to the surface of the plate element and so as to define an overhanging heel between the location at which the resilient body element is integral to the surface of the plate element and the trailing end of the surface, the overhanging heel extending downwardly below the location at which the resilient body element is integral to the surface of the plate element wherein said the heel serves to help stabilize the fracture site, the body element defining a shoulder at one end at the juncture of the body element and the surface and a pin at the other end of the body element.

## REMARKS

### I. Status Summary

Currently, claims 1-6 are pending. Claims 1-6 presently stand rejection. Within this Amendment, claims 1, 5, and 6 have been amended. Applicant respectfully submits that the amendments to claims 1, 5, and 6 do not raise issues of new matter. Support for the amendments can be found in Figures 7A, 7B, 8A, 8B, 9A, and 9B. Further, applicant respectfully submits that the Amendment and the remarks below place claims 1-6 in condition for allowance. Reconsideration of the application and entry of the Amendment is respectfully requested.

### II. Interview Summary

Applicant conducted a telephonic interview with Examiner James L. Swiger, III on January 11, 2008. Participating in the telephonic interview with Examiner Swiger was applicant's attorney, David M. Sigmon. Applicant sincerely appreciates Examiner Swiger's time and consideration in agreeing to and participating in the telephonic interview. Applicant understands that no agreement was reached between the applicant and Examiner Swiger during the telephonic interview. Applicant respectfully submits that the amendment and remarks presented herein are believed to be consistent with and also summarize the positions presented by the parties during the telephonic interview.

### III. Double Patenting

Claims 1-4 stand rejected on the grounds of non-statutory obviousness-type double patenting as being unpatentable over claims 1-4 of U.S. Patent No. 6,379,359. Claims 5 and 6 stand rejected on the grounds of non-statutory obviousness-type double patenting as being unpatentable over claims 1 and 6-8 of U.S. Patent No. 6,379,359.

Without commenting on the propriety of this rejection, applicant notes that a terminal disclaimer is submitted herewith in order to disclaim the terminal part of any patent granted in the instant application which would extend beyond the expiration date of U.S. Patent No. 6,379,359. Therefore, applicants respectfully submit that the rejection of claims 1-4, 5 and 6 on the grounds of non-statutory obviousness-type double patenting should be withdrawn at this time.

### IV. Claim Rejections under 35 U.S.C. § 102(b)

Claims 1-6 stand rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 4,483,335 to Tornier (hereinafter, "Tornier"). Further, claims 1-6 stand rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 6,379,359 to Dahners (hereinafter, "Dahners").

Applicant notes that it is well settled that for a cited reference to qualify as prior art under 35 U.S.C. §102, each element of the claimed subject matter must be disclosed within the reference. See Hybritec, Inc. v. Monoclonal Antibodies, Inc., 802 F.2d 1367, 231 U.S.P.Q. 81 (Fed. Cir. 1986) (stating that "[[i]]It is axiomatic that for prior art to anticipate under 102 it has to meet every element of the claimed invention"). Accordingly, Applicant respectfully submits that neither Tornier nor Dahners disclose

every element of claims 1-6 and therefore cannot anticipate these claims under 35 U.S.C. §102(b).

IV. A. Summary of the Independent Claims 1, 5, and 6

Rejected under 35 U.S.C. § 102(b)

Claim 1 recites a longitudinally extending intrafocal plate for securing bone fractures. The intrafocal plate includes elongated intrafocal plate element having a surface at one end thereof defining a top, bottom, a leading end, and a trailing end and sized to overlay a fracture site. The elongated intrafocal plate has a longitudinally extending intrafocal resilient body element integral with the intrafocal plate element adjacent to but spaced apart from the trailing end of the surface of the plate element so that the leading end of the surface of the plate element extends above the location at which the resilient body element is integral to the surface of the plate element. Also, the resilient body element is integral with the plate element adjacent to but spaced apart from the trailing end of the surface so as to define an overhanging heel between the location at which the resilient body element is integral to the surface of the plate element and the trailing end of that surface. The overhanging heel extends downwardly below the location at which the resilient body element is integral to the surface of the plate element. The heel serves to help stabilize the fracture site. The body element is formed to extend generally in the lengthwise direction of the surface and wherein the other end of the body element defines a pin element.

Claim 5 recites an intrafocal plate for securing bone fractures. The intrafocal plate includes an elongated intrafocal plate element having a surface at one end thereof



defining a top, bottom, leading end and trailing end and sized to overlay a fracture site. The intrafocal plate has a longitudinally extending intrafocal resilient body element integral to the surface adjacent to but spaced apart from the trailing end of the surface of the plate element so that the leading end of the surface of the plate element extends above the location at which the resilient body element is integral to the surface of the plate element. Also, resilient body element is integral with the plate element adjacent to but spaced apart from the trailing end of the surface so as to define an overhanging heel between the location at which the resilient body element is integral to the surface of the plate element and the trailing end of the surface. The overhanging heel extending downwardly below the location at which the resilient body element is integral to the surface of the plate element. The heel serves to help stabilize the fracture site. The other end of the body element defines a pin with the intrafocal plate including one or more screws for insertion through one or more apertures defined in surface of the plate element.

Claim 6 recites a longitudinally extending intrafocal plate for securing metaphyseal bone fractures. The intrafocal plate includes an elongated intrafocal plate element having a surface at one end thereof with one or more apertures therein in defining a top, bottom, leading end and trailing end and sized to overlay a fracture site. The intrafocal plate has a longitudinally extending intrafocal resilient body element integral to and depending from the trailing end of the surface so that the body element forms an acute angle with the surface and extends generally in a lengthwise direction of the surface. The body element is adjacent to but spaced apart from the trailing end of the surface of the plate element so that the leading end of the surface of the plate

element extends above the location at which the resilient body element is integral to the surface of the plate element. Also, resilient body element is integral with the plate element adjacent to but spaced apart from the trailing end of the surface so as to define an overhanging heel between the location at which the resilient body element is integral to the surface and the trailing end of the surface. The overhanging heel extending downwardly below the location at which the resilient body element is integral to the surface of the plate element. The heel serves to help stabilize the fracture site. The body element defines a shoulder at one end at the juncture of the body element and the surface with a pin at the other end of the body element.

#### IV. B. Arguments Against the Rejections of the Claims based 35 U.S.C. § 102(b)

Applicant respectfully submits that Tornier does not anticipate independent claims 1, 5, and 6 or the claims that depend therefrom. In particular, Tornier does not disclose all the features of claims 1, 5 and 6.

Tornier discloses a nail **8** that is bent twice at one end in opposing directions so as to form a shoulder **8a** substantially perpendicular to the preceding portion of the nail and to form a flattened plate portion **8b** that extends upward from the shoulder **8a**. Tornier only discloses a plate portion **8b** which extends upward from the nail **8** and does not have any portion that overhangs the nail **8** and extends downwardly below the location at which the nail **8** is integral to the plate portion **8b**.

Tornier does not disclose that a leading end of the surface of the plate **8b** extends above the location at which the resilient body element (at the shoulder **8a**) is integral to the surface of the plate **8b** and that an overhanging heel extends downwardly

below the location at which the resilient body element (at the shoulder **8a**) is integral to the surface of the plate **8b**. The plate portion **8b** only extends on one side of the shoulder **8a**. The plate **8b** does not extend on both sides of the shoulder **8a**. Thus, Tornier does not disclose all the structural features recited by claims 1, 5 and 6 or the claims that depend therefrom.

Similarly, Applicant respectfully submits that Dahners does not anticipate independent claims 1, 5, and 6 or the claims that depend therefrom. In particular, Dahners does not disclose all the features of claims 1, 5 and 6.

Dahners discloses an intrafocal plate for securing bone fractures comprising an elongated plate element having a flat plate surface at one end thereof defining a top surface and a bottom surface and a leading end and a trailing end. A longitudinally extending resilient body element depends from the trailing end of the flat plate surface so as to define a shoulder at the juncture of the body element and the flat plate surface and a pin at the other end of the body element. As shown in the figures, apparatus **10** comprises a plate element **10A** top portion and a downwardly and inwardly extending body element **10B**. Body element **10B** of apparatus **10** forms a shoulder **10C** at one end at its juncture with plate element **10A** and an arcuate pin **10D** at the other end thereof. Dahners only discloses a plate element **10A** which extends upward from the body element **10B** (and shoulder **10C**) and does not have any portion that overhangs the body element **10B** and extends downwardly below the location at which the body element **10B** is integral to the plate element **10A**.

Dahners does not disclose that a leading end of the surface of the plate element **10A** extends above the location at which the body element **10B** is integral to

the surface of the plate element **10A** and that an overhanging heel extends downwardly below the location at which the body element **10B** is integral to the surface of the plate element **10A**. The plate element **10A** only extends on one side of the shoulder **10C**. The plate element **10A** does not extend on both sides of the shoulder **10C**. Thus, Dahners does not disclose all the structural features recited by claims 1, 5 and 6 or the claims that depend therefrom.

For the above reasons, applicant respectfully submits that neither Tornier nor Dahners anticipate independent claims 1, 5 or 6. Since claims 2-4 depend from claim 1, Applicant respectfully submits that neither Tornier nor Dahners anticipate claims 2-4 as well. Applicant, therefore, respectfully requests that the rejections of claims 1-6 under 35 U.S.C. § 102(b) be withdrawn and the claims allowed at this time.

#### CONCLUSION

In light of the above amendments and remarks, it is respectfully submitted that claims 1-6 of the present application are now in proper condition for allowance, and an early notice to such effect is earnestly solicited.

If any small matter should remain outstanding after the Patent Examiner has had an opportunity to review the above Remarks, the Patent Examiner is respectfully requested to telephone the undersigned patent attorney in order to resolve these matters and avoid the issuance of another Official Action.

DEPOSIT ACCOUNT

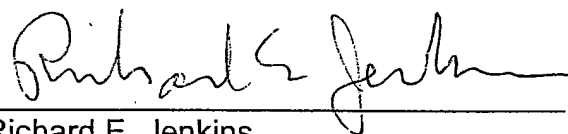
The Commissioner is hereby authorized to charge any fees associated with the filing of this correspondence to Deposit Account No. 50-0426.

Respectfully submitted,

JENKINS, WILSON, TAYLOR, & HUNT, P.A.

Date: January 14, 2008

By:

A handwritten signature in dark ink, appearing to read "Richard E. Jenkins", written over a horizontal line.

Richard E. Jenkins  
Registration No. 28,428

REJ/DMS/gwc

421/75/2

Customer No: 25297